

August 22, 2019

Suzanne Case, Chairperson
Board of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvitousek@cades.com

Re: Notification of Completion of Construction and Request for Board
Approval of Long-Term Rental of Property
at Haena, Kauai, Identified as Tax Map Key No. (4) 5-9-005:025
Owned by Dr. Matthew M. Malerich, CDUP KA-3509

Dear Ms. Case:

This office represents Dr. Matthew M. Malerich, owner of the property identified above located in Haena, Kauai. The Board of Land and Natural Resources approved construction of a single-family residence on the above-identified property pursuant to Conservation District Use Permit (CDUP) KA-3509 on October 23, 2009. The purpose of this letter is twofold: 1) to notify the Board and the Department of completion of the construction of the home and 2) to renew Dr. Malerich's request for the Board approval to rent the subject residence for one or more terms of no less than six (6) months. See attached letter dated July 13, 2016. The Director responded to the previous request on August 11, 2016, stating that the Department is willing to present the request to the Board but required evidence that construction of the home was complete. See attached letter date August 11, 2016.

Completion of construction of the single-family residence is evidenced by the enclosed documentation: a copy of the County of Kaua'i, Building Division's signoff on the final inspection on August 16, 2018, Project Inspection list, and a copy of the Affidavit of Publication filed with the Fifth Circuit Court on January 30, 2018.

Dr. Malerich is a practicing orthopedic hand surgeon in Bakersfield, California. He and his wife have owned another property on Kauai for many years and have vacationed on Kauai every year. Dr. Malerich intends to retire in a few years and, when he does, he intends to live in the home they have built at Haena. Until he retires, Dr. Malerich would like to be able to rent the home for one or more terms of no less than 6 months over the next five (5) years.

Condition 18 of CDUP KA-3509 states, "the Single Family Dwelling shall not be used for rentals or any other commercial purposes unless approved by the Board of Land and Natural Resources." Pursuant to condition 18 and the language of HAR § 13-5-42 (5), the Board has the discretion to approve rental use for a term of no less than 6 months. This is what the owner is requesting.

C S

Cades Schutte Building
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813
Tel: 808.521-9200
Fax: 808.521-9210
www.cades.com

Kona Office
75-170 Hualalai Road, Suite B-303
Kailua Kona, Hawaii 96740
Tel: 808.329-5811
Fax: 808.326-1175

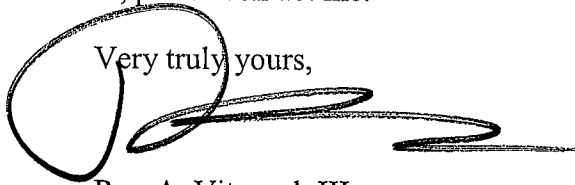
Maui Office
444 Hana Highway, Suite 204
Kahului, Hawaii 96732
Tel: 808.871-6016
Fax: 808.871-6017

The basis of the owner's request is as follows.

1. There will be substantial costs associated with owning and maintaining this single-family residence. The owner pays substantial annual real property taxes, insurance, and other expenses.
2. The owner's professional schedule prevents occupancy of the home on a regular basis until he retires and there have been risks and problems associated with homes in this area being unoccupied for extended periods of time. There has been vandalism, theft, and deterioration of other properties in the area.
3. The owner submits that there is no adverse impact on the natural resources of the conservation district resulting from a long-term renter occupying the property as opposed to occupation by the owner. A person or family renting the property for a term of more than 6 months will use the home as the owner would use the home and will not engage in actions or activities that would adversely affect the resources of the conservation district.
4. The owner requests the authority to rent the home for one or more rental term of no less than 6 months during the next five (5) years. The owner does not have a pending rental agreement and has not advertised the property for rent. Having approval from the Board to rent the property for one or more terms of no less than 6 months during the next five years will allow the owner flexibility to rent the property on a long-term basis without having to come back to the Board to approve each rental contract.

Based on the foregoing, it is respectfully requested that the Board approve this request. If you have questions or require additional information, please contact me.

Very truly yours,



Roy A. Vitousek III
for
CADES SCHUTTE
A Limited Liability Law Partnership

RAV/bah

encl.: July 13, 2016, request letter to BLNR
August 11, 2016, letter from DLNR
County of Kaua'i Building Permit, Final Approval
Project Inspection list
Affidavit of Publication

cc: Samuel J. Lemmo, Administrator, OCCL
Matthew M. Malerich, M.D.

July 13, 2016

Roy A. Vitousek III
Direct Line: (808) 329-5811
Direct Fax: (808) 326-1175
E-mail: rvlitousek@cales.com

Suzanne Case, Chairperson
Board of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Re: Request for Board Approval of Long-Term Rental of Property
at Haena, Kauai, Identified as Tax Map Key No. (4) 5-9-005: 025,
Owned by Dr. Matthew M. Malerich, CDUP KA-3509

Dear Ms. Case:

This office represents Dr. Matthew M. Malerich, owner of the property identified above located in Haena, Kauai. There is a single-family residence located on the subject property which was permitted by the Board of Land and Natural Resources pursuant to Conservation District Use Permit (CDUP) KA-3509 approved on October 23, 2009. The purpose of this letter is to request the Board's authority for the owner to rent the subject residence for one or more terms of no less than six (6) months.

Condition 18 of CDUP KA-3509 states, "the Single Family Dwelling shall not be used for rentals or any other commercial purposes unless approved by the Board of Land and Natural Resources." Pursuant to condition 18 and the language of HAR § 13-5-42 (5), the Board has the discretion to approve rental use for a term of no less than 6 months. This is what the owner is requesting.

Dr. Malerich is a practicing orthopedic hand surgeon in Bakersfield, California. He and his wife have owned another property on Kauai for many years and have vacationed on Kauai every year. Dr. Malerich intends to retire in a few years and, when he does, he intends to live in the home they have built at Haena. Until he retires, Dr. Malerich would like to be able to rent the home for one or more terms of no less than 6 months over the next five (5) years.

The basis of the owner's request is as follows.

1. There will be substantial costs associated with owning and maintaining this single-family residence. The owner pays substantial annual real property taxes, insurance, and other expenses.

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Suzanne Case, Chairperson
July 13, 2016
Page 2

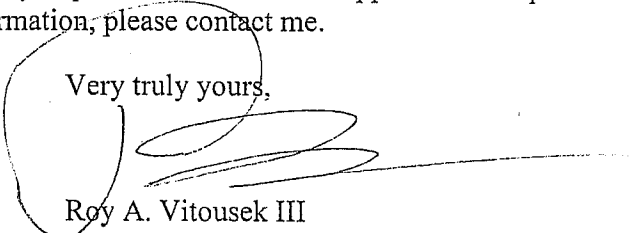
2. The owner's professional schedule prevents occupancy of the home on a regular basis until he retires and there have been risks and problems associated with homes in this area being unoccupied for extended periods of time. There has been vandalism, theft, and deterioration of other properties in the area.

3. The owner submits that there is no adverse impact on the natural resources of the conservation district resulting from a long-term renter occupying the property as opposed to occupation by the owner. A person or family renting the property for a term of more than 6 months will use the home as the owner would use the home and will not engage in actions or activities that would adversely affect the resources of the conservation district.

4. The owner requests the authority to rent the home for one or more rental term of no less than 6 months during the next 5 years. The owner does not have a pending rental agreement and has not advertised the property for rent. Having approval from the Board to rent the property for one or more terms of no less than 6 months during the next five years will allow the owner flexibility to rent the property on a long-term basis without having to come back to the Board to approve each rental contract.

Based on the foregoing, it is respectfully requested that the Board approve this request. If you have questions or require additional information, please contact me.

Very truly yours,



Roy A. Vitousek III

for

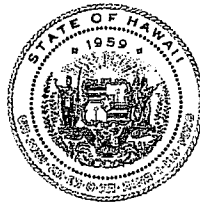
CADES SCHUTTE

A Limited Liability Law Partnership

RAV/bah

cc: Samuel J. Lemmo
Matthew M. Malerich, M.D.

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:TM

Correspondence: KA 17-10

AUG 11 2016

Roy A. Vitousek III
Cades Schutte
75-170 Hualalai Road, Suite B-303
Kailua-Kona, HI 96740

SUBJECT: Request to Allow Long-Term Rental of a Single Family Residence Located at
Hā'ena, Kaua'i, TMK: (4) 5-9-005:025

Dear Mr. Vitousek:

The Department is in receipt of your correspondence regarding the subject matter. According to your information, your client owns a single family residence (SFR) that is located in the Conservation District Limited subzone. On October 23, 2009, the Board of Land and Natural Resources [Board] approved Conservation District Use Permit (CDUP) KA-3509 for the SFR subject to 21 conditions. Condition #7 of CDUP KA-3509 specifically states: **That the single family dwelling not be used for rentals or any other commercial purposes unless approved by the Board of Land and Natural Resources.**

Since obtaining this permit, the rules and regulations of the Conservation District noted as the Hawai'i Administrative Rules (HAR), Chapter 13-5 has been amended. HAR, §13-5-42 Standard conditions, notes any land use permitted within the conservation district is subject to standard conditions. Regarding residential commercial use, the standard condition has been amended to state: The single family residence shall not be used for rental or any other commercial purposed unless approved by the Board. Transient rentals are prohibited, with the exception of wilderness camps approved by the Board.

HAR, §13-5-2 defines transient rentals as the use of a single-family residence or structure for less than one hundred eighty consecutive days in exchange for compensation, including but not limited to monetary payment, services, or labor of employees.

Currently, the landowner is requesting to rent the residence for one or more terms of no less than 6-months over the next 5 years. The Department is willing to present this matter to the Board for consideration. Pursuant to HAR, §13-5-40 (1), a public hearing shall be required as the rental of the residence shall be considered a commercial use.

STUD-38200-2

DO NOT WRITE


DATE: 8/11/16

Roy A. Vitousek III
Cades Schutte

Correspondence: KA 17-10

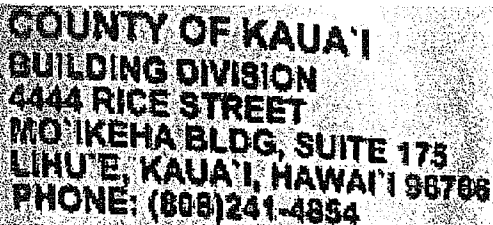
Please notify the OCCL in writing when the residence is complete and has been cleared for occupancy. Should you have any questions regarding this correspondence, contact Tiger Mills of the Office of Conservation and Coastal Lands at (808) 587-0382.

Sincerely,



Suzanne D. Case, Chairperson
Department of Land and Natural Resources

C: OCCL
KDLO
County of Kauai-Planning Dept.



BUILDING/ ELECTRICAL
PERMIT

Permit Type: BUILDING

mit/Application No: 11-00002345
mit Type: BUILDING
uation: \$1,021,400.00
mit Fee: \$300.00

Date Invoiced: 7/15/14
Prepared By: JVOLKPEP
Total Fees Paid:
Plan Review Fee:

Party Address: 5-7834 KUHIO HWY
 or Name: MALEKRIC, MATHEW/JUDITH
 Apt Name:

Tax Map Key: 5-9-003-02
Contractor: PICKELS, DOUGLAS
Sub Cont:

Structure Information

Construction Type VA

Occupancy Type	Area
----------------	------

HER OF STORIES: 3

TOTAL FLOOR AREA: 303,000

Description of work: 2 STORY SINGLS FAMILY RESIDENCE
Information:

10-50

FLOODZONE (VE); BFE = 34' MSL; TWO
ELEVATION CERTIFICATES REQUIRED: 1. AT
FRAMING 2. AT FINAL
res-1560, land-1016 int floor
garage-etc-754
stair/landing/walkways-269

PARTIAL PERIMETER FOOTINGS & SPOT FOOTING REBAR REINFORCEMENT

40 2-26-15

9/15 Scolopas (Beech) Beam on lower SE N. 1/4

6/15 Column (2nd)
1 OCT 2016: (PA) PARTIAL FRAMING INSPECTION. STAIRS NOT YET INSTALLED.
NEED ELECTRICAL RUN WALL INSPECTION OF FUR
PARTIAL INSULATION INSPECTION - AL

5/14: Insulation, Roof RD

NEED 20 min. Door e Garage dien per separaten 2-in-1 Sch
docking hinges.

INSPECTION REPORT

1-BUILDING FOUNDATION

2-BUILDING SLAB FLOOR

2-BUILDING LOAD/UPDIFT, TIES
3-BUILDING

3-BUILDING FLOOD ELEVATION CERTIFIED

FORM 1 RECEIVED

FORM 1 BUILDING FRAMING

6-BUILDING LATH/GYPSUM

7-BUILDING DATA
8-BUILDING FINAL

APPROVED ~~DISAPPROVED~~



APR 14 1964

VISION

1-30-17-17
B-1-1-1-1

44-15

8-BUILDING

Permission is hereby given to do work according to conditions hereon and according to approved plans and specifications. This permission is valid for a period of 180 days, or if construction or work is suspended or delayed for more than 180 days, a new permit must be obtained. Separate permits must be obtained for building, sign, electrical, and plumbing work.

Permit Description	Inspection Type	Scheduled Date	Status	Result Date	Min	Ma
PLUMBING PERMIT-UPC 2008	PLUMBING BLDG SEWER INSTALLED	03/28/2018	WAIVED	03/28/2018	10	
PLUMBING PERMIT-UPC 2008	PLUMBING ROUGH-IN FLOOR	08/29/2016	APPROVED	08/29/2016	10	
PLUMBING PERMIT-UPC 2008	PLUMBING ROUGH-IN SLAB	03/28/2018	WAIVED	03/28/2018	10	
PLUMBING PERMIT-UPC 2008	PLUMBING ROUGH-IN WALL	08/29/2016	APPROVED WITH EXCEPTION	08/29/2016	10	
PLUMBING PERMIT-UPC 2008	PLUMBING FINAL	06/21/2018	APPROVED	06/21/2018	20	
	2-BUILDING SLAB/FLOOR				10	
	4- FLOOD ELEVATION CERTIFIED				10	
	5- FORM 1 RECEIVED				10	
	6-BUILDING FRAMING				10	
	7-BUILDING LATH/GYPSUM				10	
	8-BUILDING FINAL				20	
	ELECTRICAL FINAL				20	

Project Inspections for 11 - 2345

Permit Description	Inspection Type	Scheduled Date	Status	Result Date	Min
BUILDING PERMIT-IBC 2008	1-BUILDING FOUNDATION	07/08/2015	APPROVED	07/08/2015	10
BUILDING PERMIT-IBC 2008	3-BUILDING LOAD/UPLIFT TIES	06/29/2016	APPROVED	06/29/2016	10
ELECTRICAL PERMIT TEMP 2008	ELECTRICAL FINAL	✓ 04/07/2015	APPROVED	04/07/2015	10
ELECTRICAL PERMIT-NEC 2008	ELECTRICAL ROUGH-IN SLAB	08/29/2016	APPROVED	08/29/2016	10
ELECTRICAL PERMIT-NEC 2008	ELECTRICAL ROUGH-IN WALL	08/30/2016	APPROVED	08/30/2016	10
FLOOD CERTIFICATION	FLOOD CERTIFICATION	07/24/2018	APPROVED	07/24/2018	10
GAS PERMIT-UPC 2008	GAS ROUGH-IN	06/21/2018	APPROVED WITH EXCEPTION	06/21/2018	10
GAS PERMIT-UPC 2008	✱ GAS FINAL	✓ 06/21/2018	APPROVED	06/21/2018	20
PLUMBING PERMIT-UPC 2008	PLUMBING ABANDONED IWW SYSTEM	03/28/2018	WAIVED	03/28/2018	10

COPY

AFFIDAVIT OF PUBLICATION

IN THE MATTER OF
TMK: 5-9-005-025
Mathew & Judith Malerich
Owner(s)

FILED

2018 JAN 30 PM 12: 23

5TH CIRCUIT COURT
STATE OF HAWAII

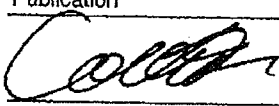
DANETTE FUJII

CLERK

STATE OF HAWAII

City and County of Honolulu

}
} SS.
}

Doc. Date: JAN 22 2018 # Pages: 1
Notary Name: COLLEEN E. SORANAKA First Judicial Circuit
Doc. Description: Affidavit of
Publication
 JAN 22 2018
Notary Signature Date

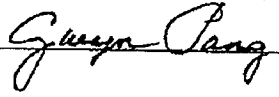
OWNER'S NOTICE OF
COMPLETION OF
CONTRACT
NOTICE IS HEREBY
GIVEN that pursuant to
the Provisions of Section
507-43, of the Hawaii
Revised Statutes, the
construction by Doug
Pickett Construction of
that certain Single Family
Residence situated at
5-7834 Kuhio Hwy.
Hanalei, Hawaii, TMK: 5-9-
005-025, has been
completed.
Mathew & Judith Malerich
Owner(s)
(TGH1062696 1/13,
1/20/18)

Gwyn Pang being duly sworn, deposes and says that she is a clerk, duly authorized to execute this affidavit of Oahu Publications, Inc. publisher of The Honolulu Star-Advertiser, MidWeek, The Garden Island, West Hawaii Today, and Hawaii Tribune-Herald, that said newspapers are newspapers of general circulation in the State of Hawaii, and that the attached notice is true notice as was published in the aforementioned newspapers as follows:

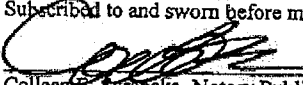
Honolulu Star-Advertiser 0 times on:
MidWeek 0 times on:
The Garden Island 2 times on:
01/13, 01/20/2018
Hawaii Tribune-Herald 0 times on:
West Hawaii Today 0 times on:

Other Publications: 0 times on:

And that affiant is not a party to or in any way interested in the above entitled matter.


Gwyn Pang

Subscribed to and sworn before me this 22 day of January A.D. 20 18


Colleen E. Soranaka, Notary Public of the First Judicial Circuit, State of Hawaii
My commission expires: Jan 06 2020

Ad # 0001062696

SP.NO.: _____ L.N.

Expires
3/16/18